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**Tarrant County Texas** 

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XTO REV PROD 88 (7-89) PAID UP (04/17/07)B

## OIL, GAS AND MINERAL LEASE

THIS AGREEMENT made this 3rd day of November, 2009, between DWIGHT J. MITCHELL ET UX, LORE A. MITCHELL, Lessor (whether one or more), whose address is: 2120 MISTLETOE BLVD, STE. #4, FT. WORTH, TEXAS 76110 and XTO Energy Inc., whose address is: 810

Lots 9, 10, 11, 12, 13 and the West 15 feet of Lot 8, Block 2, Mistletoe Heights Addition, an addition to the City of Fort Worth, Tarrant County, Texas according to the map or plat thereof as recorded in Volume 388, Page 5 of the Plat Records of Tarrant County, Texas

This lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by Lessor by limitation, prescription, possession, reversion, after-acquired title or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land. For the purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 0.94391 acres, whether actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus as lump sum consideration for this lease and all rights and options hereunder.

- 2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of vears from the date hereof, hereinafter called "primary term," and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.
- paragraph a hereot. In the event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to acreage owned by each.

  4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease, and/or with any other land, lease, or leases, as to any or ell minerals or horizons, so as to establish units containing not more than 80 surface acres, and/or with any other land, lease, or leases, as to any or ell minerals or horizons, so as to establish units containing not more than 80 surface acres plus 10% acreage tolerance, if similed to one or more of the following:

  (i) gas, other than casinghead gas, (2) fluid hydrocarbons (condensate) which are not liquids in established to one or more of the following:

  (i) gas, other than casinghead gas, (2) fluid hydrocarbons (condensate) which are not liquids in established or or more horizons, so as to contain more than 640 surface acres plus 10% acreage tolerance, if similed to one or more of the following than the state of the state profiled as gas wells by the conservation agency having unisdiction. If larger units than any of those herein permitted, either at the measurement of the established, or after enlargement, are permitted or required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling, or already drilled, any such unit may be established or enlarged to conform to the size permitted or required by such governmental rule or nie. Lesses electrostes and options are such provision, then such unit shall become effective or the date such instrument or instrument with a subject to the such grants and provided for in said instrument or instruments but if said instrument or instruments make no such provision, then such unit shall become effective or over the portion of said land included in the unit, or on other tand unit

- 5. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations, as to the released acreage or interest.
- 8. Whenever used in this lease the word "operations" shall mean operations for any of the following: preparing the drillsite location or access road, drilling, testing, completing, reworking, recompleting, deepening, sidetracking, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or other minerals, excavating a mine, production of oil, gas, sulphur or other mineral, whether or not in paving quantities.
- 7. Lessee shall have the use, free from royalty, of water, other than from Lessor's water wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet to the house or barn now on said land without the consent of the Lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.
- 8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations, and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns, and successive assigns. No change or division in the ownership of said land, royalties, or other moneys, or any part thereof, howsoever effected, shall increase the obligations or diminish the rights of Lessee, including, but not limited to, the location and drilling of wells and the measure of production. Notwithstanding any other actual or constructive knowledge or notice thereof of or to Lessee, its successors or assigns, no change or division in the ownership of said land or of the royalties, or other moneys, or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until sixty (60) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts, or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may, nevertheless pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.
- 9. In the event Lessor considers that Lessee has not complied with all its obligations hereunder, both express and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall then have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after service of such notice on Lessee. Neither the service of said notice nor the doing of any acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all its obligations hereunder. If this lease is canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less that forty acres), such acreage to be designated by Lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing specing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained and shall not be required to move or remove any existing surface facilities necessary or convenient for current operations.
- 10. Lessor hereby warrants and agrees to defend title to said land, by, through and under Lessor only, against the claims of all persons whomsoever. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes or other fiens, or interest and other charges on said land, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. If this lease covers a less interest in the oil, gas, sulphur, or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.
- 11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and Lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of Lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.
- 12. Lessor agrees that this lease covers and includes any and all of Lessor's rights in and to any existing well(s) and/or wellbore(s) on said land, other than existing water wells, and for all purposes of this lease the re-entry and use by Lessee of any existing well and/or wellbore shall be deemed the same as the drilling of a new well.
- 13. Notwithstanding anything to the contrary contained in this lease, at the option of Lessee, which may be exercised by Lessee giving notice to Lessor, a well which has been drilled and Lessee intends to frac shall be deemed a well capable of producing in paying quantities and the date such well is shut-in shall be when the drilling operations are completed.
- 14. As a result of land development in the vicinity of said land, governmental rules or ordinances regarding well sites, and/or surface restrictions as may be set forth in this lease and/or other leases in the vicinity, surface locations for well sites in the vicinity may be limited and Lessee may encounter difficulty securing surface location(s) for drilling, reworking or other operations. Therefore, since drilling, reworking or other operations are either restricted or not allowed on said land or other leases in the vicinity, it is agreed that any such operations conducted at a surface location off of said land or off of lands with which said land are pooled in accordance with this lease, provided that such operations are associated with a directional well for the purpose of drilling, reworking, producing or other operations under said land or lands pooled therewith, shall for purposes of this lease be deemed operations conducted on said land. Nothing contained in this paragraph is intended to modify any surface restrictions or pooling provisions or restrictions contained in this lease, except as expressly stated.
- 15. It is hereby agreed and understood that there shall be no drilling activities on the surface of the leased premises without the prior written permission from the surface owner of the applicable portion of the leased premises. Notwithstanding the foregoing, this waiver of surface shall not be construed as a waiver of the rights of Lessee to utilize the subsurface of the leased premises under this lease, and Lessee shall have the right to exploit, explore for, develop and produce oil, gas and other covered minerals under this lease from wells from surface locations off the leased premises, including, but not limited to, directional or horizontal drilling activity which comes under the surface of the leased premises. This drilling surface waiver does not apply to any surface rights associated with instruments other than this lease.
- 16. Lessor represents and warrants that Lessor has not entered into any extension, modification, ratification, renewal, amendment or agreement to renew or amend any prior existing Lease. Lessor covenants and agrees not to extend, modify, ratify, renew, amend or agree to renew or amend any Prior Lease so as to extend the primary term set forth therein.
- 17. Notwithstanding anything to the contrary contained herein, reference in this instrument to "other minerals" shall not be deemed to include coal or lignite or any minerals other than those associated with the production of oil and gas. This instrument covers oil, gas, and casinghead gas, and other liquefiable hydrocarbons produced in association with the production of oil and gas.

IN WITNESS WHEREOF, this instrument is as of the date first above written.

My commission expires:

Seal:

LORE A. MITCHELL STATE OF <u>TEXAS</u> (ACKNOWLEDGMENT FOR INDIVIDUAL) COUNTY OF TARRANT This instrument was acknowledged before me on the 12 day of NOVEMBER ... , 2009 by DWIGHT J. MITCHELL ET UX, LORE A. MITCHELL Signature JERRY W. PRIDDY Notary Public COMMISSION EXPIRES
July 17, 2013 Printed My commission expires: Seal: STATE OF \_\_\_ (ACKNOWLEDGMENT FOR CORPORATION) COUNTY OF \_\_\_\_\_ This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by corporation, on behalf of said corporation. Signature \_\_ Notary Public